

FIRST REGULAR SESSION

# SENATE BILL NO. 194

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SHOEMYER.

Read 1st time January 14, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

0564S.011

## AN ACT

To amend chapter 266, RSMo, by adding thereto five new sections relating to private investigations for farm commodities.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 266, RSMo, is amended by adding thereto five new sections, to be known as section 266.123, 266.125, 266.127, 266.129, and 436.550, to read as follows:

**266.123. As used in sections 266.123 to 266.129, the following terms mean:**

- (1) "Department", the department of agriculture;
- (2) "Director", the director of the department of agriculture;
- (3) "Farmer", the person responsible for planting a crop, managing the crop, and harvesting the crop from land on which a breach of contract or patent infringement is alleged to have occurred;
- (4) "Genetically engineered plant", a plant or any plant part or material, including, but not limited to, seeds and pollen, in which the genetic material has been changed through modern biotechnology in a way that does not occur naturally by multiplication or natural recombination;
- (5) "Modern biotechnology", the application of either of the following:
  - (a) In vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) and direct injection of nucleic acid into cells or organelles;
  - (b) Fusion of cells beyond the taxonomic family that overcome natural physiological reproductive or recombinant barriers and that are not techniques used in traditional breeding and selection.

266.125. 1. Before a person, or his or her agent, holding a patent  
2 on a genetically engineered plant may enter upon any land farmed by  
3 another for the purpose of obtaining crop samples to determine  
4 whether breach of contract or patent infringement has occurred, the  
5 person holding the patent or his or her agent shall do all of the  
6 following:

7 (1) Notify the farmer in writing of the allegation that breach of  
8 contract or patent infringement has occurred and request permission  
9 to enter upon the farmer's land;

10 (2) Provide a copy of that notification to the director;

11 (3) Obtain the written permission of the farmer;

12 (4) Inform the farmer in writing of all the procedural  
13 requirements provided in this section so that the farmer is made aware  
14 of any required timeframes for response as well as any actions that may  
15 be lawfully taken by both the farmer and the patent holder.

16 2. The farmer shall grant or deny access in writing within ten  
17 days of receipt of a request to enter the land pursuant to subsection 1  
18 of this section.

19 3. (1) If the farmer withholds permission under subsection 2 of  
20 this section, the person holding a patent may petition the circuit court  
21 in the county in which the alleged breach of contract or patent  
22 infringement has occurred for an order granting permission to enter  
23 upon the farmer's land;

24 (2) If the person holding a patent believes that the crop from  
25 which samples are to be taken may be subject to intentional damage or  
26 destruction, the person may seek a protective order from the circuit  
27 court. The protective order shall be crafted to minimize interruption  
28 or interference with normal farming practices, including harvest and  
29 tillage.

30 4. After written permission has been received from the farmer  
31 under subsection 2 of this section or if a circuit court grants an order  
32 under subsection 3 of this section, the following sampling procedures  
33 shall apply:

34 (1) If requested by either party, the director or his or her  
35 designee shall be present for the sampling, provide for the collection  
36 of samples, or conduct any other aspect of the sampling or analysis  
37 process as requested. The director shall designate an employee or

38 enter into an agreement with an employee or agent of this state or a  
39 third party unaffiliated with either party to carry out the specified  
40 sampling activity. The farmer or his or her agent and the person  
41 holding the patent or his or her agent may be present at any collection  
42 of samples conducted pursuant to sections 266.123 to 266.129, and each  
43 shall be notified of the time and location of the sample-taking at least  
44 twenty-four hours in advance;

45 (2) Samples for analysis may be taken from a standing crop, from  
46 representative standing plants in the field, or from crop residue  
47 remaining in the field after harvest;

48 (3) The results of any testing conducted under sections 266.123  
49 to 266.129 shall be sent by registered letter by the testing party to all  
50 parties involved in the investigation within thirty days after the results  
51 are reported from the testing laboratory.

52 5. The department may charge a reasonable fee for any sampling  
53 activities it conducts as required under this section. The holder of the  
54 patent shall be responsible for paying any such fee.

55 6. The department shall promulgate rules for the implementation  
56 of sections 266.123 to 266.129. Any rule or portion of a rule, as that  
57 term is defined in section 536.010, RSMo, that is created under the  
58 authority delegated in this section shall become effective only if it  
59 complies with and is subject to all of the provisions of chapter 536,  
60 RSMo, and, if applicable, section 536.028, RSMo. This section and  
61 chapter 536, RSMo, are nonseverable and if any of the powers vested  
62 with the general assembly pursuant to chapter 536, RSMo, to review, to  
63 delay the effective date, or to disapprove and annul a rule are  
64 subsequently held unconstitutional, then the grant of rulemaking  
65 authority and any rule proposed or adopted after August 28, 2009, shall  
66 be invalid and void.

266.127. Any patent holder, or agent of such patent holder, who  
2 violates any provision of sections 266.123 to 266.129 shall be subject to  
3 a penalty of no less than fifty thousand dollars per violation.

266.129. A farmer shall not be liable to the patent holder for any  
2 damages based on the presence or possession of a patented genetically  
3 engineered plant on real property owned or occupied by the farmer  
4 when the farmer did not knowingly buy or otherwise knowingly acquire  
5 the genetically engineered plant, the farmer acted in good faith and

6 without knowledge of the genetically engineered nature of the plant,  
7 and when the genetically engineered plant is detected at a de minimis  
8 level. The authority of a court to determine the presence of de minimis  
9 levels of a genetically engineered plant is intended solely for the  
10 purpose of assisting in adjudicating claims relating to the possession  
11 or use of a patented genetically engineered plant in which the seed  
12 labeler, patentholder, or licensee, has rights. Nothing in this section is  
13 intended to do any of the following:

14 (1) Establish, or be used as the basis for establishing, an  
15 acceptable level at which a patented genetically engineered plant may  
16 be present;

17 (2) Be used to alter or limit liabilities or remedies for personal  
18 injury or wrongful death;

19 (3) Be used outside or beyond the scope or context of a legal  
20 dispute regarding genetically engineered plants.

436.550. Any contract executed and entered into for the purchase  
2 of genetically modified seed for the production of an agricultural crop  
3 shall comply with all of the provisions of sections 266.123 to 266.129,  
4 RSMo. Any such contract that does not comply with all of such  
5 provisions shall be considered in violation of state law and shall  
6 therefore be rendered null and void.

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